

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	MM Docket No. 00-39
Review of the Commission's)	
Rules and Policies Affecting the)	
Conversion to Digital Television)	

To: The Commission

JOINT BROADCASTERS' PETITION FOR RECONSIDERATION

LIN Television Corporation,¹ Paxton Media Group, Inc.,² Post-Newsweek
Stations, Inc.,³ Raycom Media, Inc.,⁴ and Vermont Public Television⁵ (collectively Joint

¹ LIN Television Corporation is the owner of KXAN-TV, Austin, TX; KXAM-TV, its satellite Llano, TX; WAND, Decatur, IL; WANE-TV, Ft. Wayne, IN; WAPA-TV, San Juan, PR; its satellite WNJX-TV, Mayaguez, PR; WAVY-TV, Portsmouth, VA; WISH-TV, Indianapolis, IN; WIVB-TV, Buffalo, NY; WLFI-TV, Lafayette, IN; WOOD-TV, Grand Rapids, MI; WTNH-TV, New Haven, CT; and WWLP, Springfield, MA.

² Paxton Media Group, Inc. is the owner of WPSD-TV, Paducah, KY.

³ Post-Newsweek Stations, Inc. is the owner of KPRC-TV, Houston, TX; KSAT-TV, San Antonio, TX; WDIV, Detroit, MI; WJXT, Jacksonville, FL; WKMG-TV, Orlando, FL; and WPLG, Miami, FL.

⁴ Raycom Media, Inc. is the owner of KASA-TV, Santa Fe/Albuquerque, NM; KFVE, Honolulu, HI; KFVS-TV, Cape Girardeau, MO; KHNL, Honolulu, HI; its satellites KHBC, Hilo, HI and KOGG, Wailuku, HI; KOLD-TV, Tucson, AZ; KSFY-TV, Sioux Falls, SD; its satellites KABY, Aberdeen, SD and KPRY-TV, Pierre, SD; KSLA-TV, Shreveport, LA; KTVO, Kirksville, MO; KWWL, Waterloo, IA; KXRM-TV, Colorado Springs, CO; WACH, Columbia, SC; WAFB, Baton Rouge, LA; WAFF, Huntsville, AL; WDAM-TV, Laurel, MS; WECT, Wilmington, NC; WFLX, West Palm Beach, FL; WLII, Caguas/San Juan, PR; its satellite WSUR-TV, Ponce, PR; WLUC-TV, Marquette, MI; WMC-TV, Memphis, TN; WNWO-TV, Toledo, OH; WOIO, Shaker Heights/Cleveland, OH; WPNB-TV, Traverse City, MI; its satellite WTOM-TV, Cheboygan, MI; WSTM-TV, Syracuse, NY; WTNZ, Knoxville, TN; WTOG-TV, Savannah, GA; WTVM, Columbus, GA; WTVR-TV, Richmond, VA; WUAB, Lorain/Cleveland, OH; and WXIX-TV, Newport, KY/Cincinnati, OH.

Broadcasters), representing 59 local commercial and noncommercial television stations, petition for reconsideration of certain aspects of the Commission's 2000 *DTV Biennial Review Order*.⁶

In this proceeding, the Commission in many respects has been sensitive to the difficulties that broadcasters face on the front lines of the DTV transition. For example, establishing procedures to resolve potentially mutually exclusive maximization applications was a necessary step.

However, the Commission appears to be relying too heavily on broadcasters alone to take actions to further this difficult transition. Specifically, the Commission's "three-stage approach to the transition to DTV" is based entirely on deadlines for broadcasters.⁷ Moreover, the deadlines are based on a 2006 completion date that all, including Chairman Powell, recognize cannot be met.⁸

The Commission's decisions about replication, principal community coverage, and channel election unfairly burden broadcasters and likely will not have the transition-enhancing effects that the Commission envisions. Unless the Commission alters these decisions at this reconsideration stage, they could become dead ends rather than thoroughfares for the DTV transition.

⁵ Vermont Public Television is the owner of WETK, Burlington, VT; WVER, Rutland, VT; WVTB, St. Johnsbury, VT; and WVTA, Windsor, VT.

⁶ Report and Order and Further Notice of Proposed Rulemaking, *In re Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 01-24 (rel. Jan. 19, 2001) ("*DTV Biennial Review Order*").

⁷ *Id.*, ¶ 24. Stage one ends May 1, 2002 when all commercial stations must begin digital service or by May 1, 2003 for noncommercial stations; stage two ends at the close of 2003 when commercial stations must elect channels or at the close of 2004 for noncommercial stations; and stage three ends on December 31, 2004 when commercial stations lose interference protection for in non-replicated service areas or on December 31, 2005, the "use-it-or-lose-it" deadline for noncommercial stations.

⁸ See Bill McConnell, *Broadcasters Ready for Battle to Postpone 2002 Transition*, Broadcasting & Cable (Jan. 29, 2001) (quoting Chairman Powell as finding "the current time frame extraordinarily unlikely to be achieved"); *FCC Comrs. Differ Over Merger Authority, DTV* (continued...)

I. THE COMMISSION SHOULD RESCIND ITS PREMATURE “USE-IT-OR-LOSE-IT” DEADLINES.

In the *DTV Biennial Review Order*, the Commission sensibly decided not to require replication but rather “to give broadcasters a measure of flexibility as they build their DTV facilities to collocate their antennas at common sites.”⁹ Requiring replication also would inefficiently force licensees not operating on their core channels to construct full replication facilities that they would have to later vacate.¹⁰ And yet, as an “incentive” to broadcasters to reach full replication quickly, the Commission imposed a December 31, 2004 “use-it-or-lose-it” replication deadline on commercial broadcasters and a December 31, 2005 deadline on noncommercial broadcasters.¹¹ This supposed incentive actually would penalize broadcasters for making legitimate business decisions about the pace at which they approach the DTV transition based on the transition’s overall progress. Accordingly, the Commission should rescind its “use-it-or-lose-it” deadlines and continue to protect broadcasters’ allotted DTV service areas. As the DTV transition progresses, broadcasters will be motivated to build out to full power in response to consumer demand and competition from other stations. A regulatory spur – particularly one that could be counterproductive – is unnecessary.

Because of the large costs of building and operating both analog and digital facilities, broadcasters understandably want to take a deliberate approach to implementing digital service based on sound business judgment. Broadcasters must be mindful of the pace of the

Transition, Communications Daily, 6 (Dec. 1, 2000) (quoting then-Commissioner Powell: “This transition is never going to be on track and never was.”).

⁹ *DTV Biennial Review Order*, ¶ 21.

¹⁰ *Id.*

¹¹ *Id.*, ¶ 22.

DTV transition. They must consider such factors as penetration rates for DTV sets, whether DTV sets are capable of over-the-air reception, the ability and willingness of cable operators to carry digital signals, and the rate of technology advancement.

The conflict between the use-it-or-lose-it deadlines and stations' plans for a graduated build-out is particularly acute for smaller stations – those with the fewest resources – and multiple station groups or state networks like Vermont Public Television (VPT) that must quickly fund multiple build-outs. And stations' financial health is not a frivolous concern. Financially healthy local stations are critical to maintaining the high quality of television service that our nation enjoys today. The use-it-or-lose-it replication deadlines deprive broadcasters of flexibility and add a further, alien element to their build-out considerations that were not made lightly and that cannot be changed without potentially great expense. In some cases, the costs of full replication at such an early date simply cannot be justified, and the public interest certainly is not served by the harm to localism and loss of universal service that would result from encroachment on a station's traditional service area once the use-it-or-lose-it deadline has passed.

Additionally, zoning problems, equipment availability problems, and the like that are beyond the control of stations may prevent full replication by the use-it-or-lose-it deadlines. For example, VPT's primary transmitter site in Mt. Mansfield (WETK) is being subjected to protracted environmental, regulatory, and collocation review. Given these issues, VPT is not at all optimistic about making its 2003 deadline for initiating service, and it may be impossible to fully replicate by 2005. Furthermore, from its early coverage analysis, VPT is concerned that the assigned DTV power levels will never permit it to replicate in Vermont's mountainous terrain.

Accordingly, the Commission should rescind the “use-it-or-lose-it” deadline for full replication and afford broadcasters much needed flexibility to respond to the challenges and market realities of the DTV transition rather than to regulation based on arbitrarily selected dates.

II. THE NEW PRINCIPAL COMMUNITY COVERAGE REQUIREMENT COULD CAUSE PROBLEMS THAT SHOULD BE REMEDIED BY COMMISSION WAIVERS.

The Commission’s new requirement that broadcasters provide a signal that is 7 dB stronger over their principal communities¹² also reduces broadcasters’ flexibility in making the difficult transition to digital transmission. While broadcasters do not ask that the Commission rescind the requirement, they do ask that the Commission affirm that it will reasonably grant waivers in cases of hardship.

Broadcasters face many different configurations of terrain and geography, not all of which lend themselves to siting towers that both provide the widest possible service and cast a stronger signal over the principal community. For example, if Raycom’s station WLUC-TV in Marquette, Michigan – hard by the shores of Lake Superior – sites a tower close to its city of license to provide a stronger principal community signal, then much of that stronger signal will be broadcast over open water. At the same time, viewers on the bluff behind Marquette and beyond will lose service because the tower is sited too low for the signal to reach them effectively. On the other hand, siting a tower higher above the city and a bit inland provides for much wider coverage and better overall service, but will not allow the station to meet the new signal strength requirement for Marquette. And yet the station will assure that Marquette

¹² See *DTV Biennial Review Order*, ¶ 27.

receives effective digital service. In this instance, the Commission should waive the principal community coverage requirement because the requirement operates to diminish rather than enhance the station's DTV service and serves no useful purpose.

Furthermore, some broadcasters have already built out DTV facilities that might have to be moved or expensively reconfigured to meet the new principal community coverage requirement. As is evident from the many continuing zoning and other tower siting problems that stations face, moving a tower often is not a realistic solution. While the station might increase power to meet the requirement, that would result in greatly increased one-time transmitter costs in the near term and much higher operating costs on an on-going basis. Directional antennas could be used to meet the new signal strength requirements, but coverage in other areas might be sacrificed (similar to the sacrifice of coverage in the Marquette example above).

Accordingly, a waiver policy is warranted to cover individual cases where it would be unreasonable or counterproductive for the Commission to insist on adherence to the principal community coverage requirement.¹³ We assume the Commission will follow such a practice, but it would be helpful for the Commission to make that clear at the outset.

III. THE COMMISSION SHOULD RESCIND ITS CHANNEL ELECTION DEADLINE.

Even though the DTV transition undoubtedly will extend past 2006, the Commission's decision requires commercial stations with two in-core channels to elect their

¹³ An additional issue raised by increased signal strength requirements and of particular concern to stations such as those of VPT is that of Canadian coordination. Any change in power or antenna pattern that exceeds any part of the assigned contours will need to be approved by Canada. A protracted Canadian approval process could wreak havoc with the new deadlines for principal community coverage requirements.

final channel for DTV operations by 2003 and non-commercial stations with two in-core channels to elect by the end of 2004.¹⁴ Joint Broadcasters do not advocate delay, but imposing overly aggressive deadlines on broadcasters serves no purpose when, as the Congressional Budget Office and the Commission's Chief of the Office of Engineering and Technology recognize, broadcasters alone cannot accomplish the DTV transition.¹⁵ The channel election deadline may force stations to make an election without adequately exploring which channel ultimately will provide better service. For example, VPT's Rutland station (WVER) may not be able to resolve issues relating to use of channel 7, and VPT's St. Johnsbury station (WVTB) may find that its DTV channel 18 is too close to some land mobile frequencies, causing it to prefer a higher channel.¹⁶ The current channel election deadline clearly would not provide VPT with sufficient time to make full evaluations of which channels it ultimately should use. Additionally, VPT's WVTM has been assigned DTV channel 24 while commercial station WNNE has been assigned DTV channel 25, and it is unclear whether serious interference issues will result. Possibly, one of the two stations will want to return to its original channel or perhaps move to another channel. The channel election deadlines simply do not allow stations enough time to

¹⁴ See *DTV Biennial Review Order*, ¶ 14.

¹⁵ See Congressional Budget Office, *Completing the Transition to Digital Television*, at 19 (Sept. 1999) ("*CBO DTV Report*"); Letter to The Honorable W.J. "Billy" Tauzin, Chairman, House Subcommittee on Telecommunications, U.S. House of Representatives, from Dale N. Hatfield, Chief, Office of Engineering and Technology, Federal Communications Commission, at 1 (Sept. 1, 2000).

¹⁶ Another more general example would be stations using channels 2 through 6, which still are being tested and about which not enough will be known by the current channel election deadlines.

identify and address all potential interference and coverage issues in such a short time after stations are scheduled to first launch DTV service.¹⁷

Rather than arbitrarily establishing channel election deadlines without any connection to an actual indicator of the DTV transition's progress, the Commission should wait until there is more evidence of when the transition will be completed before requiring channel election. The Congressional Budget Office has recognized that the 85% DTV set penetration rate "is the linchpin that determines when the transition to digital TV is complete and a broadcaster's analog signal will be turned off."¹⁸ But the channel election deadlines are divorced from this linchpin or any other measurement. It serves no purpose to know which channels broadcasters eventually will vacate when it is unknown at which time they will be available. Accordingly, the Commission should tie the channel election deadline to a clear indication that the transition is progressing toward timely completion, such as some significant percentage of DTV set penetration short of the analog giveback target.

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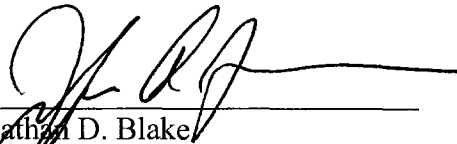
¹⁷ As noted above, in some cases, stations simply will not be able to meet their DTV on-air deadline because of forces beyond their control. In those cases, the stations will have even less time to make the complex evaluations necessary to adequately choose a final DTV channel.

¹⁸ *CBO DTV Report*, at 9.

A successful DTV transition requires the contributions and cooperation of many participants. No one group, not even one as central to the transition as broadcasters, can be expected to make complex decisions and expend great amounts of capital on accelerated schedules divorced from the true pace of the transition. Consequently, Joint Broadcasters urge the Commission to (1) rescind the use-it-or-lose-it deadline for full replication that hinders a rational approach to rolling out DTV service, (2) adopt a reasonable waiver policy for cases where the principal community coverage requirement cannot or should not be met, and (3) rescind the arbitrary channel election deadlines and instead tie them to a concrete measurement of significant transition progress.

Respectfully submitted,

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